

ENROLLED ORDINANCE 161-17

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO
REPEAL AND RECREATE SECTION 3.04(2) PERTAINING TO LOTS
BEING CREATED WHICH DO NOT ABUT A PUBLIC ROAD
FOR THE FULL WIDTH REQUIREMENT (ZT-1620)

WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago Town Board on May 17, 2006, after Public Hearing and the giving of requisite notice of said hearing, and duly referred and considered by the Waukesha County Park and Planning Commission and a recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the Wisconsin Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Ordinance amending the text of the Town of Mukwonago Zoning Ordinance, approved by the Mukwonago Town Board on May 9, 1983, to repeal and recreate Section 3.04(2) pertaining to lots being created which do not abut a public road for the full width requirement, and more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference (ZT-1620), is hereby approved.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

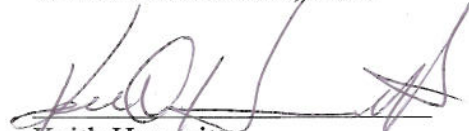
BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage, approval and publication.

BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of provisions of this Ordinance are hereby repealed.

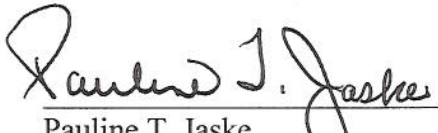
AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE TO
REPEAL AND RECREATE SECTION 3.04(2) PERTAINING TO LOTS
BEING CREATED WHICH DO NOT ABUT A PUBLIC ROAD
FOR THE FULL WIDTH REQUIREMENT (ZT-1620)


Presented by:
Land Use, Parks, and Environment Committee

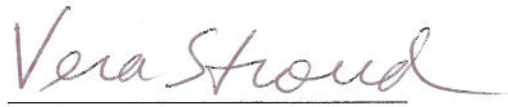

William A. Mitchell, Chair

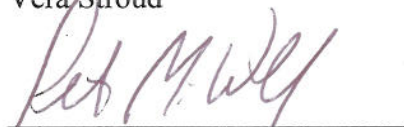

Keith Hammitt


Keith Harenda

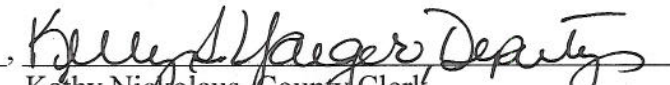

Pauline T. Jaske


Walter L. Kolb


Vera Stroud


Peter M. Wolff

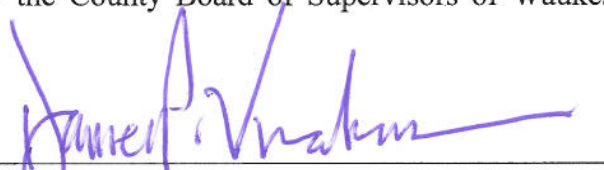
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 7/3/06, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓

Vetoed: _____

Date: 7/15/06, 
Daniel P. Vrakas, County Executive

ORDINANCE NO. *2006-5*AN ORDINANCE TO REPEAL AND RECREATE SECTION 3.04(2)
IN THE ZONING ORDINANCE
FOR THE TOWN OF MUKWONAGO

WHEREAS, the Plan Commission for the Town of Mukwonago has over this last several years reviewed the existing provisions regarding flag lots, easements to lots, and the possible use of private streets; and

WHEREAS, the Plan Commission for the Town of Mukwonago has determined that the current ordinance does not accurately address the issue of creating parcels which do not abut a public road in order to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County Development Plan Park and Open Space Element; and

WHEREAS, the Plan Commission for the Town of Mukwonago has directed the Town Planner to put together certain recommendations regarding these issues; and

WHEREAS, the Plan Commission for the Town of Mukwonago has reviewed this report, determined this to be a legitimate concern, and directed the Town Staff to put together an ordinance clarifying these issues; and

WHEREAS, subject to Section 22.01 of the Zoning Ordinance for the Town of Mukwonago and the provisions of Section 60.62 of the Wisconsin Statutes, the Town Board may from time to time after first submitting a proposal to the Plan Commission for a report and after notice of Public Hearing, amend, supplement, or change the regulations of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, upon referral of the Petition by the Town Clerk, the Plan Commission for the Town of Mukwonago scheduled a Public Hearing for the Town Board of the Town of Mukwonago and the Plan Commission of the Town of Mukwonago as soon as practical; and

WHEREAS, upon publication of the required notice of the Public Hearing and mailing of said notice for the Public Hearing to all parties-in-interest as required by Section 23.02 of the Zoning Code for the Town of Mukwonago, the Plan Commission for the Town of Mukwonago and the Town Board for the Town of Mukwonago held a public hearing on May 3, 2006 at 6:30 p.m., as required by Section 22 of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has recommended to the Town Board for the Town of Mukwonago that said ordinance be approved; and

WHEREAS, the Town Board of the Town of Mukwonago, after carefully reviewing the recommendation of the Town Plan Commission of the Town of Mukwonago, having given the matter due consideration, and having based its determination on the effect of approving the petition on the health, general welfare, safety and economic prosperity of the Town, and has given due consideration into the municipal problems involved, hereby determines that the use will not violate the spirit or intent of the Zoning Ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a potential adverse affect on the property values and general desirability of the Town,

NOW, THEREFORE, the Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, DOES ORDAIN AS FOLLOWS:

SECTION 1: The Town of Mukwonago Zoning Ordinance in Section 3, entitled General Provisions, Subsection 3.04 entitled Site Regulations, Subsection 3.04(2), entitled Lot Must Abut a Public Road for Full Required Width; Subsection 3.04(2)(B), is hereby repealed and recreated to read as follows:

(B) Exceptions: Flag lots, Private Streets and Easements. While the Town will generally not permit the creation of flag lots, or the utilization of private streets or easements to access tracts of land, there are situations where the Town may allow the creation of flag lots, and there are situations existing as of December 1, 1990 in the Town of Mukwonago that the Town may treat as exceptions for the prohibition against the use of private streets. Situations existing as of January 1, 2002 in the Town of Mukwonago, or in order to implement the Town's Park and Open Space Plan or the Waukesha County Development Plan Park and Open Space Element, may be treated by the Town as exceptions from the prohibition against the use of easements or flag lots.

1. Flag Lots. Subject to the approval of the Plan Commission and Town Board, a principal building may be permitted on a tract of land which does not abut a public street, if the tract of land abuts the public street by a narrow strip of land which is an ownership strip and a part of the lot as long as, at a minimum, all of the following requirements are satisfied:
 - (a) Provided such tract of land excluding the narrow portion of the same providing access to the public street conforms to the minimum lot area of the district in which it is located.
 - (b) Provided such tract of land which has a narrow strip of land is at least thirty three feet (33') wide where it abuts the public street and for its entire length;

- (c) Provided such tract of land is recorded as a certified survey map or plat, in accordance with the Town of Mukwonago Subdivision Control Ordinance.
- (d) Provided such tract of land has or will have a paved or graveled driveway for a width of twelve feet (12') from the road right-of-way to the area of the proposed residence and said driveway is in compliance with all applicable laws, including with regard to the grade requirements of the Town of Mukwonago Building Code, and it does not impact the natural flow of surface water, or if the narrow strip of land is to be used to access a parcel which is designated for public ownership or to be owned by a Private Conservation Organization in order to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space Element.
- (e) Provided such tract of land does not conflict with the plans for the future development of streets in the area or the "Official Map for the Town of Mukwonago."
- (f) (f) In the case of the access provided to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space Element, the Town may place certain restrictions so as to prohibit a conflict with adjacent neighborhoods.

In order to determine if there is a conflict with plans or future development in the area, the Applicant may be required by the Town of Mukwonago Plan Commission to provide a neighborhood development plan showing street extensions and street patterns as they relate to topography, environmental features, drainage patterns, existing structures and parcels, and soil suitable for development for review by the Plan Commission. In no case, shall there be more than one residence allowed on such tract of land.

2. Private Streets. In situations where there is as of December 1, 1990 an existing private street right-of-way of sufficient width as provided below and there are in existence separate recorded tracts of land already created fronting upon said private right-of-way, in that situation the Town may permit

the private right-of-way to become legal access for these existing separate recorded tracts of land to be served by said right-of-way on the following terms and conditions:

- (a) The Plan Commission determines that the subject tract of land existed as a tax key number prior to December 1, 1990.
- (b) The Plan Commission finds that it is in the best interest of the Town to certify the tract of land as a legal parcel.
- (c) The Plan Commission finds that the subject tract of land conforms to the minimum lot area, lot dimensions, lot width, lot sizes, building locations and building sizes of the district in which it is located.
- (d) The Plan Commission finds that the subject tract of land has access by a permanent easement on said private street of at least thirty three (33') feet in width to a public street, or where more than one principal residence or lot is proposed, the easement for such access shall be at least sixty six (66') feet in width.
- (e) The Plan Commission has determined that the property owner has placed a deed restriction on the property in a form as approved by the Town Attorney giving notice that access is by way of a private street or way. Said deed restriction must be legally recorded with the Register of Deeds.
- (f) The Plan Commission has determined that the ownership of the private street is clearly determined, that the private street or way will be maintained, that a written property maintenance agreement in a form satisfactory to the Plan Commission is on file with the Town, and that all property owners are advised as to their responsibilities for maintenance of the private street or way. Said agreement must be legally recorded with the Register of Deeds.
- (g) The Town Board approves a certified survey map for the subject land, which is then recorded in the

461-0-019

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office of the Waukesha County Register of Deeds, unless the land division was previously made by CSM or plat, which was approved by the Town Board in accordance with the Land Division and Development Control Ordinance and recorded.

3. Easements. In situations where there is as of January 1, 2002 an existing easement of sufficient width as provided below and there is in existence a separate recorded tract of land served by said easement, or where a land division is to occur in order to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space element, the Town may permit the easement to become legal access for such tract of land to be served by said easement on the following terms and conditions:
 - (a) The Plan Commission determines that the subject tract of land existed prior to January 1, 2002 as a legally created parcel in accordance with the requirements of the Zoning Ordinance and Land Division and Development Control Ordinance in effect at the time it was created, and was a parcel having a separate tax key number prior to January 1, 2002 or is a parcel which is to be created in order to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space Element.
 - (b) The Plan Commission finds that it is in the best interest of the Town to certify the tract of land as a legal parcel.
 - (c) The Plan Commission finds that the subject tract of land conforms to the minimum lot area, lot dimensions, lot width, lot sizes, building locations and building sizes of the district in which it is located or implements the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space Element.
 - (d) The Plan Commission finds that the subject tract of land has access by a permanent easement of at least thirty three (33') feet in width to a public street, or where more than one principal building or lot is

proposed, the easement for such access shall be at least sixty six (66') feet in width or has adequate width in order to accommodate access to the public or for maintenance equipment on parcels which are created in order to implement the Town of Mukwonago's Park and Open Space Plan or the Waukesha County County Development Plan Park and Open Space Element.

- (e) The Plan Commission determined that the property owner has placed a deed restriction on the property in a form as approved by the Town Attorney giving notice that access is by way of an easement. Said deed restriction must be legally recorded with the Register of Deeds.
- (f) The Plan Commission has determined that ownership of the easement is clearly determined, that the easement will be maintained, that a written property maintenance agreement in a form satisfactory to the Plan Commission is on file with the Town, and that all property owners are advised as to their responsibilities for maintenance of the easement. Said agreement must be legally recorded with the Register of Deeds.
- (g) The Town Board approves a certified survey map for the subject land, which is then recorded in the office of the Waukesha County Register of Deeds, unless the land division was previously made by CSM or plat, which was approved by the Town Board in accordance with the Land Division and Development Control Ordinance and recorded.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

161-0-019

10.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 17th day of May, 2006.

TOWN OF MUKWONAGO

David Dubey
David Dubey, Town Chair

ATTEST:

Katherine Wilson
Katherine Wilson, Town Clerk

Published and posted this 18th day of May, 2006.



161-0-019

11.

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/27/06

(ORD) NUMBER-1610019

1 K. HERRO.....AYE
 3 T. ROLFS.....AYE
 5 J. MARCHESE.....
 7 J. JESKEWITZ.....AYE
 9 P. HAUKOHL.....AYE
 11 K. HARENDA.....AYE
 13 J. MORRIS.....AYE
 15 D. SWAN.....AYE
 17 J. BEHREND.....AYE
 19 W. MITCHELL.....AYE
 21 W. KOLB.....AYE
 23 J. TORTOMASI.....AYE
 25 K. CUMMINGS.....
 27 D. PAULSON.....AYE
 29 T. BULLERMANN.....AYE
 31 V. STROUD.....AYE
 33 K. HAMMIT.....AYE
 35 P. MEYER.....AYE

2 R. THELEN.....AYE
 4 R. HUTTON.....AYE
 6 D. BROESCH.....AYE
 8 J. DWYER.....AYE
 10 S. WOLFF.....AYE
 12 T. SCHELLINGER....AYE
 14 A. KALLIN.....AYE
 16 R. STEVENS.....AYE
 18 B. MORRIS.....
 20 P. WOLFF.....AYE
 22 G. BRUCE.....AYE
 24 B. KRAMER.....AYE
 26 F. RUF.....AYE
 28 P. JASKE.....AYE
 30 K. NILSON.....AYE
 32 P. GUNDRUM.....AYE
 34 R. SINGERT.....AYE

TOTAL AYES-32

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS_____

TOTAL VOTES-32